ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	

REPLY COMMENTS OF BELL ATLANTIC

The Bell Atlantic Telephone Companies

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I. Introduction and Summary

As the Commission has noted, changing the rules to facilitate interconnection by new service providers will not foster competition unless the Commission also ensures that, on a practical level, new service providers can effectively offer service to their customers. The Commission should therefore explicitly prohibit all service providers from entering into, or enforcing the exclusivity provisions of existing contracts with owners of multi-dwelling unit buildings that purport to grant exclusive rights to that provider to provide service to tenants of that building.

None of the parties refutes the notion that underlies the Commission's Notice -- that narrowband and broadband technologies will merge, and, when that happens, disparate rate demarcation point ("RDP") policies will lead to operational and competitive dislocations. These

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

dislocations could impair subscribers' ability to obtain the services they desire from the provider of their choice. Accordingly, rather than waiting for immediate access problems to arise, as some parties apparently want, the Commission should adopt at this time a prospective policy requiring a single RDP for both narrowband and broadband services. To avoid disruption and to prevent endless battles over ownership, the Commission should grandfather its present rules and policies for existing wiring installations but prohibit any service provider from denying access to existing wiring, conduit, and moldings if a subscriber chooses to replace the incumbent provider's services with those obtained from a new provider.

The single RDP for new residential Multiple Dwelling Units ("MDUs"), or those substantially rewired after the grandfathering date (Bell Atlantic suggests January 1, 1998) should be placed at the minimum point of entry ("MPOE") of the building. If not all units in the building can technically be served by all services from the MPOE, the service provider should have the option of establishing one or more additional RDPs at common and accessible locations from which acceptable service can be provided. Both narrowband and broadband services offered by the same service provider will terminate at the same location, thereby facilitating the provision of multiple services over the same facility. Establishing a 1998 grandfather date will give all service providers sufficient time to adjust their operations to the new RDP policy and prevent disruption. By retaining current policies for existing structures and specifying a sufficient adjustment period, the Commission will help enable subscribers to obtain quality service from the provider of their choice in a timely manner and ensure that no service provider is disadvantaged.

The Commission should not promulgate RDP rules for non-residential buildings and buildings with mixed residential/non-residential use. At present, the Commission's rules do

not specify the RDP for high-capacity data services (above DS1), and it would be disruptive to customers and could cause technical problems affecting delivery of their services if the Commission were to impose restrictions on the RDP location for such services. In addition, many newer competitors for business services currently place their RDPs for all services at one or more customer-designated locations. In order to promote competition on equal terms, incumbent local exchange carriers should be given the flexibility to be able to do the same, at their option.

The same signal leakage requirements should apply to all broadband providers. Beyond the needs of health and safety, however, there is no need for signal quality standards once competition is in place. The competitive marketplace will make signal quality a selling point, without regulatory intervention. In addition, the existing analog signal standards are not applicable to the digital systems that will become the future norm.

Finally, a common set of rules should apply to customer premises equipment ("CPE") that is used for both telephony and video services, except that Part 68 registration rules should not be extended to video CPE. All CPE should be subject to the Commission's Computer Inquiry II non-structural safeguards. Customers should be permitted to connect any compliant equipment to any service provider's facilities. Manufacturers should be encouraged to design equipment that can be upgraded through downloaded software to avoid frequent obsolescence as network services evolve.

Adoption of these proposals will help facilitate a robust, competitive local market for both broadband and narrowband services and products, with regulatory involvement only as needed to ensure that this competition is fair.

II. Right of Access To Property

As the Commission has observed,[2] policies designed to encourage competition will be ineffective if telecommunications service providers and building owners are permitted to enter into exclusive contracts that prevent individual tenants from selecting from among all available providers for their telecommunications services. The Commission should therefore prohibit telecommunications service providers from entering into, or enforcing the exclusivity provisions of, any contract or arrangement under which a service provider compensates the owner of an MDU to be the exclusive provider of any voice, video or data service in, or have an exclusive right of access to, that building. Similarly, the Commission should prohibit telecommunications providers from offering or making any payment, other than actual compensation for any property damage inflicted during installation, delivery, or removal of service, to any building owner in return for such a right.

Many current exclusive contracts grant cable operators the sole right to provide video service to MDU buildings, either by conferring an exclusive right of access to the buildings or by conferring an exclusive right to provide the service itself. In effect, such contracts enable cable operators to block other providers from offering competing services and to deny building residents the benefits of choice in a competitive marketplace. Thus, they are contrary to the Commission's current cable home wiring rules, which give alternative providers the opportunity to provide competing video service after the termination of initial video service.[3] And they will

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[2] ***Notice of Proposed Rulemaking***, CS Docket No. 95-184, FCC 95-504, ¶ 61 (rel. Jan. 26, 1996) ("Notice").

[3] ***Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring***, 8 FCC Rcd 1435, 1436 (1993) ("Cable Home Wiring Order").

conflict with any new inside wiring rules that are designed to increase the opportunities for competition.[4]

To ensure the effectiveness of its inside wiring rules and to promote competition, the Commission should establish rules banning cable operators from entering into exclusive contracts for the provision of video service to MDU buildings, whether accomplished through a restriction on access or service. In addition, the Commission should prohibit cable operators from enforcing the exclusivity provisions of any such existing contract. Such rules would eliminate unreasonable barriers to competition without unduly interfering with the interest of MDU building owners and managers. They would not require building owners or managers to grant access to competing providers, unless otherwise required by law.[5] Building owners and managers would still retain discretion, where otherwise permitted, to grant or deny access to whomever they chose. Communications providers would simply be prohibited from inducing

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[4] ***See*** Notice at ¶ 4 ("Through this *NPRM*, we seek comment on whether and how we should revise our current telephone and cable inside wiring rules to reflect these new realities and promote competition, by ensuring that the Commission's inside wiring rules continue to facilitate the development of new and diverse services for the American public.").

[5] Within Bell Atlantic's current 7-state telephone service area, certain state or county laws require building owners to permit access by cable television service providers. ***See, e.g.*** N.J.S.A. § 48:5A-49; W.Va. Code § 5-18A-4; Anne Arundel (Md.) County Code, Art. 13, § 5-901 to 5-904. Others remove the economic incentive for building owners to deny tenants the benefits of choice and competition by forbidding building owners from demanding or accepting payment from cable service providers as a price of building entry. ***See*** W.Va. Code §§ 5-18A-4, 5-18A-6 (which provides for just compensation to the landlord for any property the cable operator takes); Va. Code § 55-248.13:2. Virginia also guarantees local telephone exchange companies access to MDUs by giving them both the right and obligation to serve any requesting subscriber in their service area. ***See*** Final Order, Investigation of Private Resale or Shared use of Local Exchange Service, Case No. PUC850036, ¶¶ 7-8 (Oct. 7, 1986). Copies of each of these documents are attached as Exhibit A.

building owners or managers to agree to contracts that require the owner or manager to deny access to or permit service by competing communications providers.

A. The Commission Has the Authority to Ban Cable Operators From Entering Into Exclusive Contracts.

Title I of the Communications Act provides the Commission with ample authority to prohibit cable operators from securing exclusive contracts or enforcing their exclusivity provisions. Title I grants the Commission general authority over "all interstate and foreign communications by wire or radio...and...all persons engaged within the United States in such communication."[6] It further provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."[7] This broad authority extends to any regulation that is "reasonably ancillary to the effective performance of [the Commission's] various responsibilities" under another title of the Act.[8]

The Commission found that it had "ancillary" jurisdiction to issue its current cable home wiring rules,[9] and it has cited this same statutory authority as the basis for

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[6] 47 U.S.C. § 152(a).

[7] 47 U.S.C. § 154(i).

[8] ***United States v. Southwestern Cable Co.***, 392 U.S. 157, 178 (1968); ***see also, FCC v. Midwest Video Corp.***, 440 U.S. 689 (1979); ***United States v. Midwest Video Corp.***, 406 U.S. 649 (1972).

[9] ***See Detariffing the Installation and Maintenance of Inside Wiring***, CC Dkt. 79-105, ***Final Rule and Summary of Report and Order***, (rel. Mar. 12, 1986) (requiring telephone carriers to relinquish ownership of inside wire); ***Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network***, 5 FCC Rcd 4686, 4691-4693, 4702-4703 (1990) ("Simple Inside Wiring Order") (setting telephone demarcation point); Cable Home Wiring Order, at 1439, 1443 (setting cable demarcation point).

considering uniform inside wiring rules in this proceeding.[10]

The Commission also may rely on its "ancillary" jurisdiction to prohibit exclusive service contracts. As discussed above, such a rule is essential both for the effective operation of the Commission's inside wiring rules and for the provision of competitive video service to MDU residents. Thus, it may be viewed as part-and-parcel of the inside wiring rules that promote the objectives of Titles II and VI of the Act, or as a mechanism independently authorized to promote the objectives of these statutory provisions.[11] In either case, a rule prohibiting exclusive contracts falls well within the Commission's ancillary jurisdiction under Title I.

Such a prohibition would be consistent with the Commission's approach in other contexts in which it has restricted communications providers from entering into exclusive contracts when necessary to increase competition and enhance consumer choice in a communications market.[12]

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[10] ***See*** Notice at ¶ 80.

[11] ***See Midwest Video Corp.***, 406 U.S. at 667 (the Commission has "ancillary" authority to regulate CATV "with a view not merely to protect but to promote the objective for which [it] has been assigned jurisdiction over broadcasting").

[12] ***See Implementation of the Cable Television Consumer Protection Act of 1992: Broadcast Signal Carriage Issues***, 8 FCC Rcd 2965 (1993) (prohibiting exclusive retransmission consent arrangements between cable operators and broadcasters); ***Implementation of the Cable Television Consumer Protection Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage***, 8 FCC Rcd 3359 (1993) (prohibiting exclusive contracts between cable operators and satellite programmers); 47 C.F.R. § 63.14 (prohibiting carriers authorized to provide international communications service from entering into exclusive affiliation agreements with foreign carriers or administrations); 47 C.F.R. §§ 73.132, 73.232 (prohibiting exclusive arrangements between broadcast station licensees and network organizations in a particular territory).

B. Building Owners' Rights Would Not be Violated By Rules Prohibiting Communications Providers From Entering Into Exclusive Contracts.

This result does not change because, in this case, the rule may incidentally affect MDU building owners, in addition to telecommunications service providers whom the Commission may directly regulate. Any decision by the Commission to regulate a communications provider will incidentally affect third parties -- the provider's existing or potential customers. Beyond that, the Commission has directly forbidden contracts between regulated communications providers and unregulated parties in the past, despite the effects on private property owners.[13]

Nor are there any constitutional obstacles to prohibiting such exclusive contracts. In ***Loretto v. Teleprompter Manhattan CATV Corp.***, 458 U.S. 419 (1982), the Supreme Court struck down a New York statute that required landlords to permit cable operators to install wiring in their buildings on the theory that even a small physical occupation of property without just compensation violates the Taking Clause. Unlike the statute in ***Loretto***, however, rules proscribing exclusive contracts would create no physical occupation because they would not compel property owners to provide access to competing cable providers.[14] Although the rules

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[13] For example, the Commission has prohibited exclusive use of antenna sites by television licensees if such use restricts the number of television stations in a particular area or unduly restricts competition among television stations in that area. ***See*** 47 C.F.R. § 73.635; ***see also*** 47 C.F.R. § 73.239. Where the television licensee leases a site, this prohibition has the incidental effect of precluding private site owners from entering into exclusive lease arrangements, and could require the site owner to admit a second television licensee whenever it admits the first licensee.

[14] Such rules would not raise the concerns voiced by building owners in this proceeding because the Commission would neither be exercising jurisdiction over building owners and managers nor mandating access to or occupation of their buildings by telecommunications providers. *See* Joint Comments of Building Owners and Managers Assn. Intl. et al., at 2-5 (filed Mar. 18, 1996).

would prevent service providers from entering into arrangements that exclude competitors from MDU buildings, the Takings Clause does not protect a party's right to exclude others from someone else's property.[15]

Moreover, neither the Due Process Clause nor the Contracts Clause gives communications providers an absolute right to enter into exclusive contracts or enforce exclusivity provisions. First, the Due Process Clause does not "guarantee the unrestricted privilege to engage in business or to conduct it as one pleases."[16] Due process demands only that regulations restricting freedom of contract "not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained."[17] This is true even where the regulation "upsets otherwise settled expectations."[18] Rules prohibiting exclusive contracts easily would withstand this scrutiny; they are a rational and reasonable means to remove roadblocks to competition and thereby promote the objectives of the Act. Second, the Contracts Clause affords no barrier because it only applies to restrictions imposed by the states.[19]

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[15] ***See Loretto***, 458 U.S. at 436 (the Takings Clause protects "an owner's expectation that he will be relatively undisturbed at least in the possession of his property").

[16] ***Nebbia v. People of the State of New York***, 291 U.S. 502, 527-28 (1934).

[17] ***Id.*** at 525; ***PruneYard Shopping Center v. Robins***, 447 U.S. 74, 85 (1980).

[18] ***Usery v. Turner Elkhorn Mining Co.***, 428 U.S. 1, 16 (1976).

[19] ***See*** U.S. Constitution, Art. 1, § 10 ("No State shall.. pass any...law...impairing the Obligation of Contracts") (emphasis added); ***Pension Benefit Guarantee Corp. v. R.A. Gray & Co.***, 467 U.S. 717, 733 n. 9 (1984) ("It could not be justifiably claimed that the Contract clause applies, either by its terms or by convincing historical evidence, to actions of the National Government.").

The Commission should also clarify that any service provider that has obtained an easement or authorization to use public or private rights-of-way to provide any service or class of service (***e.g.***, telephone service or cable television service) may use that easement or right-of-way to provide additional services. Such a declaration will help avoid potential disputes with local officials and among competitors as to the scope of existing easement or right-of-way rights. Such a clarification is within the Commission's jurisdiction, as it is in furtherance of a federal policy relating to interstate telecommunications services.

Customers should have the same right to install inside broadband wiring on their side of the RDP, for both existing and new structures, as they now have for narrowband wiring. This right should not vary based upon whether the facility is carrying telephony as well as video services.

III. Rate Demarcation Point

The Commission recognizes that retention of its existing rules placing the RDP[20] at disparate points for cable and telephony "may cause needless confusion and expense for consumers, property owners and service providers."[21] The reason is that, in the future, both narrowband and broadband services will be delivered over the same facility. Although, as some parties have observed, this convergence has not yet taken place, the Commission should not wait for a competitive crisis to establish a common RDP policy. Accordingly, the Commission

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[20] The Commission defines the RDP, in relevant part, as the "point of demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises." 47 C.F.R. § 68.3.

[21] Notice at ¶ 12.

should adopt as a policy, to be implemented on a going-forward basis, that the RDPs for all services and all types of facilities should be established at the same location for residential buildings constructed or substantially rewired after a specified grandfather date, such as January 1, 1998.

To avoid disruption to current subscribers, the Commission should grandfather its existing rules and policies relating to the placement of the RDP[22] for existing buildings, and those built or rewired before the grandfather date. It should not require that they be relocated, but should promote competition by guaranteeing a right of access to existing wiring within a building by a new service provider, as explained below. Mandatory relocation of existing RDPs would be prohibitively expensive and would provide little benefit to users and providers alike.

A. Single-Family Residential Units

Existing single-family telephony RDPs are currently anywhere from just outside to just inside the dwelling. Cable RDPs are generally outside the dwelling. For new single-family dwellings, the Commission should require the RDP to be at a common location. In the typical installation, the RDP will be at the outside wall, which is the current practice for new telephony and many cable installations. If multiple providers are serving the unit, all should terminate within twelve inches of each other, close to a common ground. This will help facilitate competition, because all providers will obtain access to the customer's inside wiring at the same point, and less redesign or additional wiring will be needed should the customer change service providers for one or more services.

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[22] ***See*** 47 C.F.R. § 68.3, Simple Inside Wiring Order.

To accommodate new technology and architectures without the need for waivers or an additional rulemaking, the Commission should allow service providers sufficient flexibility to establish additional RDPs between the property line (such as on a terminating device) and a point twelve inches inside the unit.[23] In any event, installation and maintenance of the inside wiring beyond the RDPs will remain the responsibility of the property owner.

The RDP rules relating to existing single-family units (particularly those units with different providers' RDPs at different locations) should be grandfathered. A new service provider would obtain access to single-family units at the existing RDP of any incumbent provider. The Commission has already prescribed rules governing the purchase or removal of cable inside wiring,[24] and telephone inside wiring has already been fully amortized. As a result, the Commission need not address the amortization of any stranded investment.

B. New Residential Multiple Dwelling Units

For buildings that are built or substantially rewired[25] after the grandfathered date,[26] there should be a common RDP for all service providers' facilities. This location should

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[23] The RDP of many older single-family installations is just inside the unit. In the future, it is possible that the most efficient place to terminate services using optical fiber or other newer technologies may be at a terminating device near the edge of the property, and the Commission's policies should allow for such changes.

[24] ***See*** Cable Home Wiring Order. The purchase price would be expected to cover the embedded cost of the wiring, so that the investment would not be stranded. If the consumer declines to purchase and the cable operator chooses not to remove the wiring, the cable operator would simply write off the abandoned property.

[25] A building is not substantially rewired for this purpose unless a substantial majority of the existing wiring serving the dwelling units is replaced.

[26] Bell Atlantic recommends that the new rules become effective for MDUs built or substantially rewired after January 1, 1998.

be at the minimum point of entry of the building, generally the basement or another lower-floor common location, except where the service provider finds such a location technically infeasible, as discussed below. The MPOE is easily accessible by all providers without the need to perform extensive work on multiple upper floors. Building owners should be willing to provide sufficient space in the basement to locate needed electronic equipment without giving up valuable corridor locations or other common space in the living areas. Owners will not need to make separate riser space available to a potentially large number of service providers in order to give tenants a choice of services from the growing number of local competitors.

The Commission should, however, find that action by building owners that interferes with a subscriber's right to access the service provider or providers of choice is inconsistent with federal policy. Accordingly, despite the assertions of building owners in this proceeding, the Commission should exercise its ancillary jurisdiction and require building owners to deliver the desired services to individual tenants.

Prescribing the RDP at the MPOE will maximize the amount of inside wiring that can be provided by companies other than the service providers. It will also give building owners the control and flexibility over the wiring within their structures that they seek in their comments. Additionally, an RDP location at the MPOE will facilitate competition. A new service provider need only bring its cabling into the MPOE and connect at that location to existing inside wiring for transport to the subscriber's unit.

In some instances, locating the RDP at the MPOE could prevent some tenants served by some broadband systems from receiving acceptable service. This is because of the distance from the MPOE to subscribers on upper floors or those located a substantial lateral distance from the RDP. For example, in some instances, a subscriber to a multichannel

multipoint distribution system must be within 150 feet of the RDP in order to receive an acceptable signal, depending on the design of the plant and the type of inside coaxial cable being used. Wireline video installations also have length of haul limitations that could prevent delivery of an acceptable signal from the MPOE. Therefore, where the service provider finds that the MPOE is too far from some subscriber units to produce an acceptable signal for some services, that provider should be permitted to deploy one or more additional RDPs at locations mutually agreed upon by the property owner and the service provider in order to afford all tenants a quality signal.[27]

C. Existing Residential Multiple Dwelling Units

Competition would be facilitated if the RDPs of all existing MDUs were required to be placed at a common location. Such a requirement could, however, be disruptive and extremely expensive. There is currently no consistency in the RDP locations of different service providers, and most MDUs today have at least two different sets of RDPs. Local exchange carriers have established RDPs anywhere from the MPOE to the inside of each unit, while cable operators' RDPs are twelve inches outside each unit. In order to gain access to the existing cable RDP, a new service provider, building owner, or subscriber would need to drill into a wall, ceiling, or floor outside of each unit. Moving these disparate installations to a single RDP could disrupt operations and cause major rewiring expenses.

The Commission can obtain most of the competitive benefits of a single RDP without these detriments if it mandates access to existing wiring, without changing the RDP. Under this proposal, a new provider would have access to the wiring serving a subscriber at a

[27] Other providers serving the building would be permitted, but not required, to locate RDPs at the same additional locations.

technically and economically feasible location between the first place inside the building where that wiring becomes subscriber-specific and the unit itself. In the case of telephony, that location may be the MPOE, at the network interface device. For video, the wiring generally becomes subscriber-specific at a lock-box or wire closet on each upper floor.[28] Without regard to the actual RDP location, the Commission should prohibit the incumbent from denying a new service provider access to the subscriber-specific wiring serving a customer that contracts to replace the incumbent's services. Where feasible, the new provider should be permitted to install at the point of interconnection the electronics needed to serve the customer. An exception to the interconnection policy will be if the incumbent continues to provide another commercial service to the customer through that facility at the time of the change of service providers. Mere plans to offer a future service will not entitle the incumbent to prevent access by the new provider. In addition, many Satellite Master Antenna Television operators have gained access to all tenants in a building by providing "free" local broadcast reception in return for having the exclusive right to sell non-broadcast channels. Tenants should have the right to request disconnection from this service in order to give other service providers access to the cable plant.

In the event that providing access to a new provider through existing subscriber-specific network wiring strands the incumbent's investment in that wiring, the Commission should give the incumbent provider flexibility in the method of accounting for the stranded investment. The incumbent should be permitted, but not required, to adopt the policy that the

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[28] There are some variations from these typical installations. For example, the first place some cable television wiring becomes subscriber-specific is on the outside wall of the building, and the wiring enters each unit from the outside.

Commission applied to telephone company station connections[29] and amortize the investment over a fixed period of time, but it should also have the right to adopt a different accounting method that is consistent with its competitive position.

D. Multiple-Building Multi-Tenant Campuses

The Commission should permit, but not require, service providers to apply the same RDP policy to each building on a residential campus as it requires for stand-alone buildings, either single-family or MDU, subject to agreement between the service provider and the customer. The Commission's current RDP policy would continue to apply to existing residential campuses, with the same right of access at each building as a new provider would have to wiring in stand-alone buildings. A provider should not be permitted to enter into an exclusive arrangement with the campus owner that binds unaffiliated tenants to take all services from that provider, and existing contracts should be unenforceable. Such exclusive contracts are as anticompetitive as are existing loop-through wiring arrangements, which Bell Atlantic has addressed separately.[30]

The RDP policy that Bell Atlantic is proposing recognizes that, in the future, service providers will deliver both narrowband and broadband services over the same facility, be it twisted pair, coaxial cable, optical fiber, or other media not yet conceived. For this reason, the Commission's RDP policy should not vary by type of facility. The proposed policy will

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[29] ***Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, of the Commission's Rules and Regulations with Respect to Accounting for Station Connections, Optional Payment Plan Revenues and Related Capital Costs, Customer Provided Equipment,*** 85 F.C.C. 2d 818, 829-30 (1981).

[30] ***Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring***, MM Docket No. 92-260, Comments of Bell Atlantic (filed March 18, 1996).

facilitate competitive entry for all services while minimizing disruption and cost to incumbents, new providers, subscribers, and building owners.

IV. Technical Connections

Contrary to the Commission's expectations, broadband services will not necessarily be carried over the same aeronautical and public safety radio frequencies, and at similar levels of power, as are current cable television signals. Although hybrid fiber-coaxial cable broadband services, like existing cable systems, provide service over 500-750 Mhz of radio frequency (RF) spectrum, such will not be the case with the types of digital broadband networks that Bell Atlantic plans to deploy. These will be baseband digital systems carrying voice, video and data signals over fiber optics and will involve no use of the RF spectrum. Even when the fiber optic transmission is converted to electrical energy at the optical network unit for delivery over a drop to the consumer's home, there is little risk of interference with public safety or aeronautical traffic, because these baseband systems do not concentrate large amounts of energy or power at any particular frequency. A baseband system's energy is instead dispersed over a large band of frequencies on the RF spectrum, greatly diminishing any chance that signal leakage will interfere with essential services.

Given the potential public safety issues at stake, however, Bell Atlantic would not object if the Commission were to extend its existing signal leakage requirements to all broadband service providers. Service providers that offer services over the types of systems that Bell Atlantic intends to deploy should have no difficulty complying with such requirements.

Providers of other systems that may find compliance more challenging are likely to be those that pose the greatest risk to public and aeronautical safety.

Regulation of signal quality, however, is a different story. When most areas were served by a single cable provider on a monopoly basis, such signal quality standards ensured that consumers would receive at least a minimally acceptable level of service. Such standards are no longer required once the incumbent faces actual competition. As the Commission itself recognizes, in such markets, multiple service providers may compete for customers on the basis of signal quality, as well as price or customer service.

V. Complex and Non-Residential Wiring

Those few residential units with complex wiring should be subject to the same RDP rules as are applied to simple wiring, ***i.e.***, the single-family or MDU rules, as appropriate. There are no technical or economic reasons to differentiate among residential installations, and any attempt to adopt differing rules will lead to confusion and expense.[31]

The Commission should not specify an RDP for non-residential installations. Although the RDP will generally be at the MPOE for telephony alone, the provider and the customer should have the flexibility to agree to one or more other RDP locations for broadband services or for facilities carrying both broadband and narrowband services.[32] In this way,

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[31] If the RDP policy differed for simple and complex wiring, the RDP could change if, for example, a residential broadband installation is multiplexed into a complex wiring installation.

[32] Unless the agreement specifies otherwise, the service provider's responsibility for service would end at the MPOE.

competition will ensure that the RDP is placed at a point that the subscriber finds most convenient and the provider finds most economical. This policy may entail placing RDPs for different services at differing locations, but this is the case today. For example, Bell Atlantic's RDP for telephony is generally at the MPOE, but high-capacity services (above DS1) generally terminate at a point in close proximity to the computer bank or other equipment being served.[33] This is because technical constraints associated with DS3, SONET, and other high-capacity services require Bell Atlantic to bring the service close to the service point in order to guarantee service quality. A change to this practice, such as prescribing a different RDP, is likely to degrade and disrupt service.

In the future, it is likely that telephony and high-capacity data services will be delivered over the same facility. There is, therefore, no public interest served by prescribing an RDP for low-speed services. Such a prescription would force providers to terminate at different locations different services that are brought to the premises over the same facility. It would also skew the marketplace, because new telecommunications service providers currently place their RDPs at customer-designated locations, regardless of the type of service being delivered. As a result, the Commission should decline to establish an RDP for non-residential wiring, but it should guarantee a right of access by new service providers when a customer terminates all services from the incumbent provider, as discussed above for residential wiring.

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[33] The Commission's existing RDP policy does not apply to services with a bit rate faster than DS1. This is because the current rules are embodied in Part 68, which applies only to services of 1.544 Mbps or slower. ***See*** 47 C.F.R. § 68.2 (a).

VI. Regulation

The courts have upheld the Commission's right to preempt inconsistent state regulation of telephone inside wiring when such preemption is needed to effect a valid federal policy.[34] The Commission should likewise preempt state regulation that interferes with interstate RDP policies. For example, the Commission should prevent states from establishing different RDP policies from those established in this proceeding. Both interstate and intrastate services are delivered through the same wiring. As a result, it would not be reasonably possible to terminate wiring for interstate services and intrastate services at different locations. Other local policies that are not directly contradictory with federal prescriptions should not be preempted, unless they prove to undermine valid Commission policies.

VII. Customer Premises Equipment

All service providers should be subject to the same set of regulatory requirements regarding provision of CPE. In addition, as is presently the case with telephone and data equipment, customers should be permitted to connect to any service provider's facilities any compliant CPE, including set-top cable boxes, obtained from sources other than the service provider. Cable CPE, whether obtained from the service provider or third parties, should be deregulated, just as telephony wiring is today. Pursuant to Section 10 of the Communications Act, the Commission should forbear from regulating, and preempt any local regulation of,

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[34] ***National Association of Regulatory Utility Commissioners v. FCC***, 880 F.2d 422 (D.C. Cir. 1989).

equipment used for basic tier cable service whenever two providers offer comparable video services in the same area.[35]

The Commission should not suppress development of innovative new services by requiring that they be compatible with existing CPE. Although the result of this policy could be obsolescence of existing premises equipment, manufacturers should be encouraged to avoid that result by offering equipment that can be upgraded by downloaded software. The Commission should explore this and other options in video equipment compatibility proceedings to implement Section 629 of the Communications Act.[36]

Video equipment, however, should not be incorporated into Part 68 of the Commission's Rules. Forcing manufacturers to design equipment to fit inflexible registration rules could inhibit innovation and result in "plain vanilla" equipment. Plug and jack standards for video and data CPE should be established by industry standards-setting groups, avoiding the need for Commission rules.

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[35] 47 U.S.C. § 160 (1996).

[36] 47 U.S.C. § 549 (1996).

VIII. Conclusion

The merger of narrowband and broadband services makes it imperative for the Commission to merge its disparate policies governing telephone and broadband wiring, including the location of the rate demarcation point. The policies proposed above will facilitate competitive policies for all services, minimize or eliminate consumers' inconvenience and disruption, and reduce providers' costs. Bell Atlantic urges the Commission to adopt these policies.

Respectfully Submitted,

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EXHIBIT A